

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Thomas Hill; et al.,

9 Plaintiffs,

10 v.

11 City of Scottsdale and David Richert,
12 Scottsdale City Manager,

13 Defendants.
14

No. CV11-1324-PHX-JAT

ORDER

15 Currently pending before the Court is Defendants' Motion for Summary Judgment
16 (Doc. 24). The Court now rules on the Motion.

17 **I. BACKGROUND**

18 Plaintiffs are all retired employees of the City of Scottsdale, Arizona (the "City")
19 who began their employment with the City prior to July 1, 1982. Pursuant to City policy,
20 employees hired before July 1, 1982 were entitled to receive cash for their accrued
21 medical leave upon retirement if they had more than three hundred accumulated medical
22 leave hours.

23 In the alternative, qualified employees could elect to participate in the City's
24 Medical Leave Conversion Account ("MLCA"). Under the MLCA, the cash equivalent
25 of the employee's medical leave would be apportioned into two separate accounts: a
26 taxable medical leave conversion account (the "Conversion Account") and a non-taxable
27 retirement health savings account ("RHS"). Pursuant to the formula in section 14-83 of
28 the Scottsdale Revised Code, the value of the accrued medical leave in the MLCA was

1 greater than the cash equivalent for the same number of medical leave hours.

2 Each Plaintiff elected the MLCA option by signing a Medical Leave Conversion
3 Authorization form. The City accordingly apportioned each Plaintiff's accumulated sick
4 leave funds into a Conversion Account and an RHS account. Plaintiffs allege that in
5 calculating the apportionment, the City incorrectly applied a "gross-up" procedure that
6 had the effect of increasing the apportionment of funds to the Plaintiffs' taxable
7 Conversion Accounts, while reducing the amount apportioned to the non-taxable RHS
8 accounts. Plaintiffs contend that the City's improper apportionment of Plaintiffs' funds
9 and the refusal to correct the account balances have caused the Plaintiffs monetary
10 damages in amounts that vary from approximately \$9,400 to \$21,505.

11 Around the time each Plaintiff retired, he received a document entitled
12 "Payout/Medical Leave Conversion" (the "MLCA document") from the City that detailed
13 the amount to be apportioned to the Plaintiff's MLCA. The MLCA document specified
14 the amount to be apportioned as taxable and the amount to be apportioned as non-taxable.
15 The document also identified a "cash equivalent amount" and a "taxable medical leave
16 conversion amount." The taxable medical leave conversion amount was higher than the
17 cash equivalent amount for each retiree. The amount deducted for taxes was detailed in a
18 section of the MLCA document entitled "Deductions on Gross Up of the Cash Equivalent
19 Value."

20 Defendants argue that the MLCA documents contained all the information
21 forming the bases of the Plaintiffs' claims and therefore each Plaintiff's claim accrued
22 when he received his MLCA document. Plaintiffs contend that they did not realize they
23 had been harmed by the allegedly incorrect apportionment until each of them individually
24 met with the Defendant City Manager, which is when their claims accrued.

25 Plaintiffs filed a Notice of Claim pursuant to A.R.S. §12-821.01 with the
26 Scottsdale City Clerk on February 25, 2011. They filed their Complaint on July 5, 2011.
27 The Complaint contains three causes of action: Count One alleges that Defendants
28 deprived Plaintiffs of their property rights without due process in violation of 42 U.S.C

1 §1983; Count Two alleges breach of contract by the City; and Count Three alleges failure
2 to pay wages in violation of Arizona's statutory wage laws. All of Plaintiffs' claims are
3 based on the assertion that Defendants incorrectly apportioned Plaintiffs' medical leave
4 amounts, which resulted in a higher portion of their amounts being taxable.

5 Defendants filed the pending Motion for Summary Judgment on February 6, 2012.
6 Defendants argue that all the claims are barred by the applicable statute of limitation and,
7 additionally, that the state law claims are barred because Plaintiffs' Notice of Claim was
8 untimely. Defendants further argue that Plaintiffs' §1983 claim fails as a matter of law
9 because their state law action for payment of medical leave benefits cannot be converted
10 into a federal constitutional takings claim.

11 II. STANDARD OF REVIEW

12 Summary judgment is appropriate when "the movant shows that there is no
13 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
14 of law." FED.R.CIV.P. 56(a). "A party asserting that a fact cannot be or is genuinely
15 disputed must support that assertion by . . . citing to particular parts of materials in the
16 record, including depositions, documents, electronically stored information, affidavits, or
17 declarations, stipulations . . . admissions, interrogatory answers, or other materials," or by
18 "showing that materials cited do not establish the absence or presence of a genuine
19 dispute, or that an adverse party cannot produce admissible evidence to support the fact."
20 *Id.* 56(c)(1)(A)&(B). Thus, summary judgment is mandated "against a party who fails to
21 make a showing sufficient to establish the existence of an element essential to that party's
22 case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v.*
23 *Catrett*, 477 U.S. 317, 322 (1986).

24 Initially, the movant bears the burden of pointing out to the Court the basis for the
25 motion and the elements of the causes of action upon which the non-movant will be
26 unable to establish a genuine issue of material fact. *Id.* at 323. The burden then shifts to
27 the non-movant to establish the existence of material fact. *Id.* The non-movant "must do
28 more than simply show that there is some metaphysical doubt as to the material facts" by

1 “com[ing] forward with ‘specific facts showing that there is a *genuine* issue for trial.’”
 2 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting
 3 FED.R.CIV.P. 56(e) (1963) (amended 2010)). A dispute about a fact is “genuine” if the
 4 evidence is such that a reasonable jury could return a verdict for the nonmoving party.
 5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant’s bare
 6 assertions, standing alone, are insufficient to create a material issue of fact and defeat a
 7 motion for summary judgment. *Id.* at 247–48. However, in the summary judgment
 8 context, the Court construes all disputed facts in the light most favorable to the non-
 9 moving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004).

10 **III. §1983 CLAIM**

11 42 U.S.C. §1983 creates a federal cause of action for state actors’ deprivation of
 12 rights guaranteed by the United States Constitution or laws. *San Bernardino Physicians’*
 13 *Serv. Med. Group, Inc. v. County of San Bernardino*, 825 F.2d 1404, 1407 (9th Cir.
 14 1987). The Fourteenth Amendment of the United States Constitution protects individuals
 15 against the deprivation of liberty or property by the government without due process.
 16 *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). A §1983 claim
 17 based on denial of procedural due process has three elements: 1) a constitutionally
 18 protected liberty or property interest; 2) deprivation of that interest by the government;
 19 and 3) lack of process. *Id.*

20 **A. Constitutionally Protected Property Interest**

21 The Court consults state law to determine whether a property interest exists. *Id.* at
 22 905. “Property interests ‘are created and their dimensions are defined by existing rules or
 23 understandings that stem from an independent source such as state law.’” *San*
 24 *Bernardino*, 825 F.2d at 1408 (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577
 25 (1972)). But federal constitutional law ultimately controls whether the property interest
 26 rises to the level of a “legitimate claim of entitlement protected by the Due Process
 27 Clause.” *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 757 (2005)(internal
 28 quotations omitted).

1 Governmental deprivation of a statutory or contractual benefit does not
2 automatically give rise to a property interest protected by the Due Process Clause.
3 *Portman*, 995 F.2d at 905. “It is neither workable nor within the intent of section 1983 to
4 convert every breach of contract claim against a state into a federal claim . . . [T]he
5 Fourteenth Amendment was not intended to shift the whole of the public law of the states
6 into the federal courts.” *San Bernardino*, 825 F.2d at 1408.

7 Plaintiffs claim they have a constitutionally protected property interest in their
8 accrued medical leave and the proper apportionment thereof. In *Portman*, the Ninth
9 Circuit Court of Appeals noted that it had “never considered the precise question of
10 whether accrued sick leave or medical insurance benefits are the type of property
11 protected by the Fourteenth Amendment.” 995 F.2d at 906. And the Court has not found
12 a Ninth Circuit decision since *Portman* addressing that precise issue.¹

13 The *Portman* court noted that although the Ninth Circuit had never addressed
14 whether accrued sick leave or medical insurance benefits constitute property protected by
15 the Fourteenth Amendment, other circuits had considered analogous questions and found
16 a §1983 claim inappropriate. *Id.* (citing *Ramsey v. Bd. of Educ.*, 844 F.2d 1268, 1272
17 (6th Cir. 1988)(holding that “an interference with a property interest in a pure benefit of
18 employment [accumulated sick leave], as opposed to an interest in the tenured nature of
19 employment itself, is an interest that can be and should be redressed by a state breach of
20 contract action and not a federal action under section 1983.”); *Costello v. Town of*
21 *Fairfield*, 811 F.2d 782, 784 (2d Cir. 1987)(claimed entitlement to an increase in pension
22 benefits under a collective bargaining agreement amounts to a contract dispute that is not
23 redressable under federal law)). On the other hand, the *Portman* court cited Ninth Circuit
24 precedent holding that the deprivation of pension or disability benefits amounts to the

25
26 ¹ The Court notes that the plaintiffs in *Harris v. County of Orange*, - - F.3d - -,
27 2012 WL 2060666 (9th Cir. June 8, 2012) argued that the defendant county’s
28 restructuring of its retiree medical program constituted denial of due process, but the
Ninth Circuit did not reach the merits of the due process violation claim in deciding the
appeal.

1 deprivation of constitutionally protected property. *Portman*, 995 F.2d at 906. The Ninth
2 Circuit posited, however, that the results in the pension and disability benefits cases
3 perhaps could “be explained in part by the special nature of pension and disability
4 benefits. Indeed, the Second Circuit drew a distinction between the entitlement to all
5 disability benefits and the entitlement to an *increase* in disability benefits.” *Id.* (emphasis
6 in original).

7 The *Portman* court found that whether entitlement to accrued sick leave and health
8 insurance benefits is a constitutionally protected property interest was an open question
9 under Ninth Circuit law. *Id.* The court ultimately declined to resolve the issue because
10 the trial court first needed to decide whether the plaintiff was in good standing at the time
11 of his termination and therefore eligible for the benefits at issue.

12 Plaintiffs here argue that they have more than a unilateral expectation of receiving
13 their accrued medical leave. *Castle Rock*, 545 U.S. at 756 (“To have a property interest
14 in a benefit, a person clearly must have more than an abstract need or desire and more
15 than a unilateral expectation of it. He must, instead, have a legitimate claim of
16 entitlement to it.”). They argue that Arizona law long has recognized that a public
17 employee’s right to accumulated medical leave is more than an abstract expectancy.
18 Plaintiffs contend that Arizona law gives them a legitimate claim of entitlement to their
19 accrued medical leave and therefore that they have property interests in their accumulated
20 medical leave.

21 Plaintiffs may be correct that Arizona law creates a property interest in their
22 accumulated medical leave. But not every property interest warrants constitutional
23 protection. *Portman*, 995 F.2d at 905. And federal constitutional law, not state law,
24 determines whether a property interest is protected by the Fourteenth Amendment. *Id.*

25 The Court cannot ascertain from current Ninth Circuit law whether a property
26 interest in accumulated medical leave is the type of interest entitled to constitutional
27 protection. The language in *Portman* casts doubt on whether such an interest is entitled
28 to protection under the Fourteenth Amendment and therefore the proper subject of a

1 §1983 claim. Nonetheless, for purposes of this Motion, the Court will assume that
 2 Plaintiffs have a constitutionally protected property interest in their accumulated medical
 3 leave and the proper apportionment of that sick leave.²

4 **B. Adequacy of Process**

5 To prevail on a §1983 due process claim, not only must a plaintiff demonstrate she
 6 has a constitutionally protected property interest, she must also show the government
 7 deprived her of that interest without due process. *Portman*, 995 F.2d at 904. Even
 8 assuming Plaintiffs have a constitutionally protected property interest in their accrued
 9 medical leave, their §1983 claim fails because post-deprivation state law remedies
 10 provide adequate process. *Boston Env'tl. Sanitation Inspectors Assoc. v. City of Boston*,
 11 794 F.2d 12, 13 (1st Cir. 1986)("[A] claim of lack of available due process fails on the
 12 merits where there is a process available under state law.")(internal citations omitted).

13 The plaintiff in *Ramsey* was a teacher who sued under §1983 for deprivation of
 14 property without due process when the defendant school board reduced the number of her
 15 accumulated sick leave days and thereby reduced her compensation for sick leave days
 16 upon retirement. 844 F.2d at 1269. The Sixth Circuit found that the plaintiff had a
 17 protectable property interest in her accumulated sick leave. *Id.* at 1272. But determining
 18 she had a protectable interest "did not resolve the question of what process [was] due, and
 19 particularly, the question of whether a federal cause of action [was] the appropriate
 20 remedy for her deprivation. Not every deprivation of liberty or property requires a
 21 predeprivation hearing or a federal remedy." *Id.*

22 The Sixth Circuit analyzed the factors outlined in *Mathews v. Eldridge*, 424 U.S.
 23 319, 334-35 (1976) to determine what process was due. The court considered: 1) the
 24 nature of the property interest involved and its importance to the individual possessing it;
 25 2) the risk of an erroneous deprivation caused by inadequate procedures designed to

26
 27 ² Plaintiffs do not argue that City policy deprived them of their accumulated
 28 medical leave. Rather, they argue that the City's failure upon their retirement to properly
 apportion their accumulated sick leave between the taxable and nontaxable portions of
 the MLCA deprived them of their property rights.

1 safeguard the interest; 3) the value, if any, that additional procedure might provide; and
2 4) the government's burden in having to provide additional procedures. *Ramsey*, 844
3 F.2d at 1272 (citing *Mathews*, 424 U.S. at 334-35).

4 The Sixth Circuit found that although the plaintiff's interest in the money she
5 would receive for her accumulated sick leave days upon retirement was important to her,
6 it was not as important as her right to employment, of which had not been deprived. *Id.*
7 at 1274. The court further found that the risk that the deprivation of her sick leave days
8 was erroneous would not be eliminated even if a predeprivation hearing were required.
9 *Id.* Finally, the court determined that requiring the state to provide a hearing anytime it
10 believed an adjustment to an employee's wages or employment benefits was necessary
11 would constitute a great burden on the state and would provide little benefit to the
12 employee beyond what state law would provide. *Id.* The Sixth Circuit ultimately held
13 that "an interference with a property interest in a pure benefit of employment, as opposed
14 to an interest in the tenured nature of the employment itself, is an interest that can be and
15 should be redressed by a state breach of contract action and not by a federal action under
16 section 1983." *Id.* at 1274-75.

17 In *Costello*, retired police officers alleged that the defendant town had deprived
18 them of a property right guaranteed by the Fourteenth Amendment without due process
19 by denying them an increase in their retirement benefits pursuant to the wage increase
20 secured for active duty officers by a collective bargaining agreement. 811 F.2d at 783.
21 The Second Circuit held that even assuming the officers had a constitutionally protected
22 property interest in increased benefits, there was no denial of due process because
23 adequate post-deprivation remedies existed. *Id.* at 784. The court found the officers
24 should have availed themselves of the grievance procedure established in the collective
25 bargaining agreement and rejected the officers' argument that the grievance procedure
26 was an ineffective post-deprivation remedy. *Id.*

27 In *Brown v. Brien*, 722 F.2d 360, 362 (7th Cir. 1983), county sheriff's
28 department employees sued the sheriff, the county, and the county board when the sheriff

1 failed to give employees compensatory time off. The county had enacted an ordinance
2 providing that county employees who worked more than a certain number of hours per
3 week may be granted time off in an amount equal to the overtime worked. *Id.* The
4 sheriff announced that, pursuant to the ordinance, he would grant compensatory time off
5 to employees in his department who worked overtime. *Id.* But when the department's
6 workload grew and the board failed to appropriate money to hire more employees, the
7 compensatory time off accrued faster than the sheriff could allow it to safely be taken.
8 *Id.*

9 The employees alleged that the ordinance and the sheriff's announced intention to
10 grant compensatory time off conferred a property right on the employees once they
11 worked the overtime. *Id.* They further alleged that the sheriff, by refusing to allow them
12 to take their accrued time off, and the board, by refusing to fund an adequate staff,
13 deprived them of their property right without due process of law. *Id.* The employees
14 sought the time off they had earned or payment for their wages for that time. *Id.*

15 The Seventh Circuit ruled that it did not need to decide whether the employees had
16 a constitutionally protected property interest in their accrued compensatory time off
17 because the employees were not deprived of due process. *Id.* at 365 ("Notwithstanding
18 our doubts that the alleged breach of contract deprived the plaintiffs of property within
19 the meaning of the Fourteenth Amendment, we need not resolve the issue, for there was
20 in any event no denial of due process."). The circuit court noted that a predeprivation
21 hearing is not required in every case. *Id.* And the court found that post-deprivation state
22 court remedies provided all the process necessary. *Id.* at 366. After analyzing the
23 *Mathews* factors, the Seventh Circuit summarized:

24
25 [T]he property of which the plaintiffs were deprived, if
26 property it is in a Fourteenth Amendment sense (which as we
27 have said we doubt), is far down on the scale of the
28 Fourteenth Amendment interests. In addition, the deprivation
was merely a postponement. Indeed, since the plaintiffs' loss
was of a kind readily compensable in monetary terms, it may

1 even be doubted whether any deprivation in the constitutional
2 sense has yet occurred, or will occur unless and until the state
3 courts turn down a meritorious contract claim. And the
4 additional procedural safeguard that the plaintiffs seek, a pre-
5 deprivation administrative hearing, would have been
6 burdensome to the local officials who would have had to
7 conduct it but of little utility to the plaintiffs in inducing the
8 sheriff to change his mind.

9 *Id.*

10 The Court agrees with the reasoning of the above cases and finds that, assuming a
11 protected property interest exists, state court remedies, *i.e.* breach of contract and wage
12 act claims, provide Plaintiffs with all the process due them. Like the compensatory time
13 off in *Brown*, the correct apportionment of Plaintiffs' accumulated medical leave between
14 the taxable and non-taxable portions of the MLCA "is far down on the scale of the
15 Fourteenth Amendment interests." *Id.* It is also an interest that is readily compensable in
16 monetary damages. In fact, Plaintiffs have provided the Court with damages calculations
17 for some of the Plaintiffs. Plaintiffs have not suggested what sort of additional
18 procedural safeguards would have prevented the City from incorrectly apportioning their
19 accrued sick leave, and the Court cannot perceive what pre-deprivation process could
20 have helped. The Court therefore finds that Plaintiffs' property interest, if any, in their
21 employment benefits "is an interest that can be and should be redressed by a state breach
22 of contract action and not by a federal action under section 1983." *Ramsey*, 844 F.2d at
23 1274-75.

24 Plaintiffs argue that a state court breach of contract claim alone would not provide
25 adequate process because they do not have a breach of contract claim against the City
26 Manager and therefore may not be able to collect their attorneys' fees without a §1983
27 claim. Defendants counter that Plaintiffs could not recover fees or other damages from
28 the City Manager under section 1983 or state law because they sued him in his official
capacity, which would impose liability only on the City. Regardless, even if state court
remedies may not provide Plaintiffs with all the potential relief of a §1983 claim, that

1 does not mean that the state remedies do not satisfy the requirements of due process.
2 *Hudson v. Palmer*, 468 U.S. 517, 535 (1984); *Parratt v. Taylor*, 451 U.S. 527, 544
3 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986). The
4 Court finds that state court remedies provide all the procedure necessary to satisfy due
5 process. If Defendants incorrectly apportioned the value of Plaintiffs' accumulated
6 medical leave in the MLCA, Plaintiffs can recover any money owed them in a state court
7 action.

8 Because, even assuming Plaintiffs have a constitutionally protected property
9 interest in the proper apportionment of their accumulated medical leave, Plaintiffs were
10 not deprived of due process, the Court grants summary judgment to Defendants on
11 Plaintiffs' §1983 claim.

12 IV. STATE LAW CLAIMS

13 The basis for subject matter jurisdiction in this case is federal question
14 jurisdiction. Plaintiffs' §1983 claim is the only federal claim alleged in the Complaint,
15 and the Court has found that claim fails as a matter of law. When the Court eliminates
16 the sole federal claim in a case and only state law claims remain, the Court should decline
17 jurisdiction over the state claims and dismiss them without prejudice. *Carnegie-Mellon*
18 *Univ. v. Cohill*, 484 U.S. 343, 350 (1988). "[I]n the usual case in which all federal-law
19 claims are eliminated before trial, the balance of factors to be considered under the
20 pendent jurisdiction doctrine-judicial economy, convenience, fairness, and comity-will
21 point toward declining to exercise jurisdiction over the remaining state-law claims." *Id.*
22 at 350 n.7. Because this is a relatively young case — discovery does not even close until
23 September, the Court finds no reason to exercise its discretion to decide the remaining
24 state law claims. The Court therefore dismisses the state law claims without prejudice
25 and will not reach the statute of limitation arguments.

26 Accordingly,

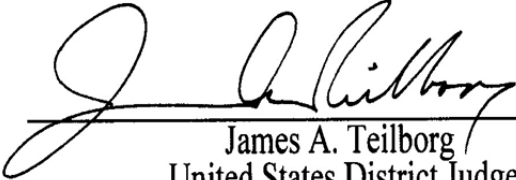
27 **IT IS ORDERED** Granting Defendants' Motion for Summary Judgment (Doc.
28 24) as to Count One's §1983 claim.

1 **IT IS FURTHER ORDERED** dismissing the remaining state law claims in
2 Counts Two and Three without prejudice, which disposes of all claims in this case.

3 **IT IS FURTHER ORDERED** that the Clerk shall not enter judgment on this
4 Order until fifteen days from the date of this Order.³

5 Dated this 19th day of July, 2012.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


James A. Teilborg
United States District Judge

³ The delay in entering judgment will allow Plaintiffs time to file an action in state court to attempt to avoid any statute of limitation issues.